

REMARKS

Claims 1, 19, 26, and 30 have been amended.

Claims 1 - 40 are present in the subject application.

In the Office Action dated October 7, 2009, the Examiner has indicated claims 18, 35, and 40 contain patentable subject matter, has rejected claims 1 - 35 under 35 U.S.C. §112, second paragraph, as being indefinite, has rejected claims 1 - 3, 8 - 15, 19 - 20, 25 - 32, and 36 - 37 under 35 U.S.C. §102(e), and has rejected claims 4 - 7, 16 - 17, 21 - 24, 33 - 34, and 38 - 39 under 35 U.S.C. §103(a). Favorable reconsideration of the subject application is respectfully requested in view of the following remarks.

Initially, the Examiner has rejected claims 1 - 35 under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner takes the position that claims 1 and 19 recite “said connectivity information”, and it is unclear which of two different recited types of connectivity information is referenced by this term. In addition, the Examiner takes the position that the term “search module” recited in claim 26 lacks antecedent basis, and that the terms “neighboring communication units” and “neighboring communication nodes” refer to similar items, thereby rendering the claim unclear.

The claims are considered to be clear and definite. However, in order to expedite prosecution of the subject application, the claims have been amended for further clarification. For example, claims 1 and 19 have been amended, and recite the feature of the stored communication unit connectivity information and stored neighboring communication unit connectivity information. Claim 26 has been amended to remove the reference to a search

module, and further recites neighboring communication network nodes. In addition, claim 30 has been amended to correct a minor typographical/grammatical error. Accordingly, claims 1 - 35 are considered to comply with 35 U.S.C. §112.

The Examiner has rejected claims 1 - 3, 8 - 15, 19 - 20, 25 - 32, 36, and 37 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0243765 A1 (Schrader et al.), has rejected claims 4 - 7, and 21 - 24 under 35 U.S.C. §103(a) as being unpatentable over the Schrader et al. publication in view of Applicant's allegedly admitted prior art, has rejected claims 16, 33, and 38 under 35 U.S.C. §103(a) as being unpatentable over the Schrader et al. publication in view of U.S. Patent Application Publication No. 2001/0029166 A1 (Rune et al.), and has rejected claims 17, 34, and 39 under 35 U.S.C. §103(a) as being unpatentable over the Schrader et al. publication in view of the Rune et al. publication, and further in view of Ohta et al., "An Adaptive Multihop Clustering Scheme for Highly Mobile Ad Hoc Networks."

These rejections are respectfully traversed. Initially, the filing date of the subject application is October 23, 2003. The Schrader et al. publication has a filing date of July 11, 2005, and is a Continuation-in-Part of U.S. Patent Application Serial No. 10/900,586, filed July 23, 2004. The Schrader et al. publication further claims priority to U.S. Provisional Patent Application Serial No. 60/490,388, filed July 25, 2003. Accordingly, the only date prior to the subject application filing date is the filing date of the '388 provisional application.

However, in order to provide a basis for the rejection, the '388 provisional application must support the subject matter relied upon to make the rejection in compliance with 35 U.S.C.

§112, first paragraph. See M.P.E.P. §2136.03(III). The Examiner rejected each of independent 1, 19, and 36 based on the Schrader et al. publication. In particular, the Examiner relied upon Fig. 3 (e.g., specifically referring to reference numerals 25 and 26) and Paragraphs 0093 - 0095 describing that figure. However, the '388 provisional application does not include Fig. 3 from the Schrader et al. publication and, consequently, does not include the corresponding description. Thus, the subject matter relied upon by the Examiner is not supported by the '388 provisional application and, therefore, does not predate the subject application filing date.

Accordingly, since each of the rejections within the Office Action is based on the Schrader et al. publication, these rejections are improper, and claims 1 - 40 are considered to be in condition or allowance.

In addition, the Examiner takes Official Notice in the Office Action at Page 16 that merging of network with a priority based on size of an active member of a network was known in the art at the time of the invention to control the size of a network. Applicants traverse this Official Notice, and respectfully request the Examiner to provide such a showing. The Examiner merely relies on sections of the Ohta et al. publication disclosing increasing in flooding of control packets due to the increase in mobile devices, and bounded numbers of cluster members managed by clusterheads. Applicants fail to see how these sections disclose a merge priority based on a comparison of the number or count of active communications units in a neighboring network with the number or count of total communication units in the neighboring network as recited in claims 17, 34, and 39.

In view of the foregoing, Applicants respectfully request the Examiner to find the application to be in condition for allowance with claims 1 - 40. However, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney to discuss any unresolved issues and to expedite the disposition of the application.

Applicants hereby petition for any extension of time that may be necessary to maintain the pendency of this application. The Commissioner is hereby authorized to charge payment of any additional fees required for the above-identified application or credit any overpayment to Deposit Account No. 05-0460.

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